

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [BA] NO. 431/2021.

Keshav Ombahadur Thapa.

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.K. Tiwari, Advocate for the Applicant.
Shri H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 16, 2021.

Hearing was conducted through Video
Conferencing.

2. Police of Khaperkheda Police Station, District Nagpur have arrested the applicant in Crime No.604/2020 for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act.

3. The applicant claimed bail by contending that he has been falsely implicated in the case. The learned Counsel for the applicant would submit that the statement of eye witnesses are totally inconsistent

2

with each other. In order to impress said submission, the learned Counsel for the applicant has produced statement of one of the eye witness namely Jaywant recorded in terms of Section 164 of the Code of Criminal Procedure, wherein the witness has stated that he has not seen the occurrence.

4. On 14.10.2020 at around 4 p.m. there was an assault on the deceased Ashwin, who succumbed to the bleeding injuries. On the same day in the late evening sister of the deceased namely Rekha lodged report with the police informing that some unknown persons have assaulted her brother and committed his murder.

5. The learned Counsel for the applicant has shown the statements of the eye witnesses namely Rashtrapal and Jaikumar, who have stated that, after witnessing the incident, they immediately informed Rekha [informant] that the named assailants have committed murder of her brother. In the context of said statement, it has been submitted that the witnesses have made false statement otherwise the informant Rekha would have stated names of the assailants.

3

6. One of the eye witness namely Jaywant alleged that co-accused Abhishekh Verma dealt knife blows on the person of the deceased, whilst other two witnesses have assigned the role to the co-accused Subham of inflicting knife blows to the deceased. Eye witnesses have stated that there was scuffle in which the applicant sat on the person of the deceased on which the co-accused had inflicted knife blows.

7. The learned A.P.P. while resisting the bail submitted that the applicant has shared common intention, since he facilitated the assault by holding the deceased. Prima facie it reveals that there was a scuffle in which there was deadly assault by means of knife by one of the co-accused, may be Abhishekh Verma or Subham, as differently stated by the eye witnesses. It is a matter of trial to establish as to whether there was prior meeting of minds and the applicant had shared common intention at the time of occurrence. However, the role attributed to the applicant is to the extent of participating in the scuffle and sitting on the person of the deceased.

8. The learned counsel for the applicant has strongly criticized the statements of eye witnesses by

4

contending that they have not witnessed the occurrence. The submission that the neighbouring persons of the deceased though have seen the applicant assaulting the deceased, their non disclosure at the earlier point of time assumes significance.

9. While residing the bail, the learned A.P.P. has invited my attention towards the antecedents of the applicant, which he has annexed in tabular form along with the reply-affidavit. It reveals that in all three prior offences were registered against the applicant out of which two are under the Maharashtra Prohibition Act. One offence of robbery and dacoity has been registered and it is informed that in said matter trial is pending. On the basis of said isolated pending offence, the applicants' liberty cannot be curtailed, if otherwise he is entitled for.

10. The investigation is now completed and charge sheet has been also filed. Considering the accusation and material collected against the applicant he cannot be detailed for indefinite period. Since the informant and applicants are residing in the same vicinity, the applicant can be released by putting stringent conditions to eliminate the chances of

5

tampering. In view of that following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant / accused – Keshav Ombahadur Thapa be released on bail in connection with Crime No.604/2020 registered with the non-applicant Khaperkheda Police Station, District Nagpur for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act on his furnishing P.R. Bond of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused shall not enter into the territorial limits of Village Khaperkheda, District Nagpur till the conclusion of the trial.
- (iv) The applicant /accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.
- (v) Pending applications if any, stands disposed of.

JUDGE

Rgd.